IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2 OF 1990

The State of Maharashtra
(At the instance of Sub-
Inspector R.P.F. Solapur,
C.R.No.28 of 1984) ...Appellant.
(Orig. Complainant)

v/s

1. Kashinath Laxman Rathod
Age about 26 years,
R/o. Fatare Wadi, Laxman
Tanda, Near Hotgi Railway
Station, Dist. Solapur

2. Somgiri Bhagwan Gosavi
Age about 28 years,
R/o Hotgi Gaon, Taluka
Solapur, Dist. Solapur.

3. Siddhu Rama Gavani
Age about 27 years
R/o Hotgi Gaon Dist.Solapur ...Respondents.
(Orig. Accused)

Mr. D.P. Adsule, APP for the appellant.

Respondent No.1 Kashinath Laxman Rathod present in person.

CORAM: V.M.KANADE,J.

DATE: 8th September, 2004

ORAL JUDGMENT:

1. Appellat - State has preferred an appeal against the Judgment and Order of the Judicial Magistrate, First Class in R.C.C. No.104 of 1984 whereby the Trial Court acquitted the accused who was charged under section 3(a) of the Railway Property (Unlawful Possession) Act.

2. The case of the prosecution is that, on 7.6.1984, at about 2.30 hours, R.P.F. Constable Taranaik saw a bullock cart standing near the track and 3/4 persons were filling it by raw coal and ash. They were apprehended. The bullock cart was seized along with the property which was shown to the Loco Foreman who certified that it belonged to Railways and a complaint was filed and the charge was framed against the accused. The Trial Court acquitted the accused.

3. I have perused the judgment and order of the Trial Court. The Trial Court has observed that the prosecution has failed to prove that the accused were found in possession of the Railway Property unlawfully. The Trial Court observed that the evidence of P.W.4, 6 and 7 is contrary to the prosecution case. I have perused the said evidence and it does appear from the said evidence that there is major contradictions in the case of the prosecution and it is difficult to believe that the respondents - accused were found at the spot as alleged by the prosecution. Some witnesses have stated that the incident took place at 10.00 A.M. whereas others have stated that the incident in question took place at 2.30 hours. There is no reason to interfere with the

said order of the Trial Court. The Order of the Trial Court is confirmed. Appeal is dismissed.

V.M. KANADE, J.